

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

CALIFORNIA PACIFIC MEDICAL CENTER

Employer

and

Case 20-RC-17876

HEALTHCARE WORKERS UNION, LOCAL
250, SEIU, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a California non-profit corporation with facilities located in San Francisco, California, where it operates acute care hospitals. During the twelve-month period ending June 30, 2003, the Employer received gross revenues in excess of \$250,000, and purchased and received

¹ After the hearing closed, the parties submitted a joint stipulation to be included in the record. This stipulation is hereby received into the record as Joint Exhibit 3.

goods valued in excess of \$5,000, which originated from points outside the State of California. Based on the parties' stipulation, I find that the Employer is a healthcare institution within the meaning of section 2(14) of the Act and that it is engaged in commerce within the meaning of the Act.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. No party contends that there is a contract bar to this proceeding. No question concerning representation exists and the petition is dismissed for the following reasons:

The Employer employs approximately 4,800 individuals at acute care hospitals located on three main campuses in San Francisco: the Pacific Campus,² the Davies Campus,³ and the California Campus.⁴ It also employs another two hundred persons at

² The Pacific Campus consists of several buildings located between Sacramento and Clay Streets and Webster and Buchanan Streets in San Francisco, with the main hospital building located at 2333 Buchanan Street in San Francisco. Among other departments, the hospital on the Pacific Campus houses surgical services, a laboratory and an emergency room. Another building on the Pacific Campus, located at 2300 California Street, a block from the main hospital, houses the Institute of Health and Healing. The Institute of Health and Healing is a holistic medicine center providing services integrating holistic and western medical practices. The Pacific Campus also includes a parking garage and other buildings within a block or two of the main hospital, including a medical office building at 2100 Webster that also houses a laboratory and radiology services. The record reflects that the Petitioner does not currently represent any employees at the building housing the Institute of Health and Healing.

³ The Davies Campus is located at Castro and Duboce Streets in San Francisco. It consists of a main hospital with a north and south tower and a parking garage and at least one other building. The Davies Campus also includes an emergency room.

⁴ The California Campus is located between Sacramento and California Streets in San Francisco, with the main hospital located at 3700 California Street. The California Campus includes a laboratory, surgical services and a parking garage. There is no emergency room on the California campus.

an office location in San Francisco.⁵ The Employer's executive offices are located on its Pacific Campus. The Pacific and Davies campuses are located about three to five miles apart and the Pacific and California campuses are located about eight to ten miles apart.

The Employer and the Petitioner are parties to a collective-bargaining agreement effective for the period November 23, 2000 through November 22, 2004 (the Agreement).⁶ The unit covered under the Agreement includes employees working at all three campuses, and is comprised of both technical employees,⁷ and non-professional/service-type employees.

By the instant petition, the Petitioner seeks to represent a residual unit comprised of approximately 500 "service and maintenance" employees. Essentially, the petitioned-for unit consists of unrepresented nonprofessional employees at all three campuses. No party contends that the residual unit sought herein should not include employees at all three campuses. Nor does any party dispute that technical employees should be excluded from the petitioned-for unit.

⁵ The Employer's human resources, payroll, risk management, accounting and information technology staff work in an office on Van Ness Avenue in San Francisco.

⁶ The Petitioner currently represent a unit comprised of all employees in the following classifications working at all three campuses: LVN-3PA1, senior LVN-3PA5, Psych Tech-1TL1-Ortho Tech-3PA4, Surg Tech I-3PA3, Ctrl Proc/Distrib Tech I-5PC3, Ctrl Proc/Distrib Tech II-5PC4, Ctrl Proc/Distrib Tech III-5PC5, Anesthesia Tech I-1NO7, Anesthesia Tech II-1NO6, Parking Attendant-6PA5, Head Housekeeping Aide-6PA1/Head Linen Aide-6PA2, Housekeeping/Linen Aide-6PA3, Food Service Aide-6PA6, Hospital Attendant-4PA2, Patient Care Assist-4PA3, Rehabilitation Aide-4PA4, Ctrl Proc/Distrib Aide-4PC2, Ctrl Proc/Distrib Aide II, Sr. Residential Care Assist-4N27, Residential Care Assistant-4N2 and Cook-1PF8; and excluding executive, administrative, professional, office or clerical employees, employees represented by any other collective-bargaining agent recognized by the Employer, and supervisory employees as defined in the Act.

⁷ Specifically, the technical employee classifications covered under the existing unit appear to be LVN-#PA1, LVN-3PA1, senior LVN-3PA5, Psych Tech-1TL1-Ortho Tech-3PA4, Surg Tech I-3PA3, Ctrl Proc/Distrib Tech II-5PC4, Ctrl Proc/Distrib Tech III-5PC5, Anesthesia Tech I-1NO7, and Anesthesia Tech II-1NO6.

The record reflects that three other unions (California Nurses Association, International Union of Operating Engineers, Stationary Engineers, Local 3, and Teamsters Automotive and Allied Workers, Local 665) also currently represent certain other employees of the Employer.⁸ One of these three unions, Teamsters Local 665, represents garage employees who are non-professional employees.

The Petitioner would include in the residual unit sought herein, certain employee classifications that the Employer contends should be excluded on the basis that they are technical employees.⁹ As to these employees, the Petitioner takes the position that they should be included in the unit because they are not technical employees but, rather, non-professional/ service employees who share a community of interest with employees in the existing contractual and petitioned-for unit. Similarly, the Employer would include in the unit certain other employees whom the Petitioner would exclude on the basis that they are

⁸ The Employer and the California Nurses Association are parties to a collective-bargaining agreement effective June 1, 2001 until June 1, 2004, which covers registered nurses performing nursing services at the Employer's California campus.

International Union of Operating Engineers, Stationary Engineers, Local 39 and the Employer have a collective-bargaining agreement effective from October 1, 1999 until September 30, 2005, covering all Engineers employed by the Employer, including the employees in the following classifications: chief engineer, chief engineer biomed, assistant chief, assistant chief biomed, stationary engineer, painter, biomed engineer, maintenance carpenter, apprentice, director tech., director main, head carpenter, and relief of head carpenter.

Teamsters Automotive and Allied Workers, Local Union No. 665, and the Employer have a collective-bargaining agreement (titled the "Garage and Parking Lot Agreement), effective December 1, 2000, until November 30, 2003. This contract covers all employees employed by the Employer under the jurisdiction of Teamsters Local 665 in San Francisco and San Mateo counties, to perform work in the following classifications: washing, polishing, lubrication, rent-car service, parking vehicles, cashiers, attendants, checking coin boxes, non-attendant parking lot checking, daily ticket audit, shuttle drivers employed in the parking department of the Employer and all other incidental duties.

⁹ These disputed positions include lab assistants I and II, specimen handling lab aides I and II, specimen handling phlebotomy lead, pathology assistant, pathology assistant, sr., dietician assistant and diet technician.

technical employees.¹⁰ The parties stipulated to the inclusion and exclusion of a number of employee classifications from the residual unit. Included among the stipulated exclusions are certain classifications which may be considered to be technical employees.¹¹ At the same time, the record suggests that there are a number of other employees who are in what would traditionally be considered to be technical employee positions, such as physical therapists, occupational therapists, etc., whom neither party argues should be included in the unit. In sum, it is plain from the positions taken by the Employer and the Petitioner that both are of the view that technical employees should be excluded from the residual unit sought herein.

Analysis. The Board's Health Care Rule provides that except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, except that if sought by labor organizations, various combinations of units may also be appropriate: (1) all registered nurses; (2) all physicians; (3) all professionals except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; (8) all nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards. See Collective Bargaining Units in the Health Care Industry; Final Rule (Part VII-29 CFR Part 103(a); 284 NLRB 1579, 1596-1597 (1989). Where

¹⁰ These disputed positions include hemodialysis tech coordinator, hemodialysis tech I and hemodialysis tech II.

¹¹ These stipulated exclusions include darkroom tech, lab tech, histocompatibility tech, recreation therapist, and lead speech aide.

there are existing nonconforming units, the Health Care Rule provides that the Board will find appropriate only those units which comport, insofar as practicable, with these eight units. *St. Johns Hospital*, 307 NLRB 767 (1992). The Board does not prohibit combinations of these eight units, however, so long as it is warranted under traditional community of interest criteria.

The record reflects that the Petitioner represents an existing nonconforming unit which combines some, but not all, of the Employer's technical employees in the same unit with some, but not all, of its non-professional employees. While another union, Teamsters Local 665, also represents certain of the Employer's non-professional employees (i.e., garage employees), it does not appear that any other union represents a unit comprised of any of the Employer's technical employees. Thus, the existing unit covered under the Agreement between the Petitioner and the Employer includes a combination of some but not all employees in two of the eight groups (i.e., technical and nonprofessional employees) set forth in the Rule, while outside of that unit there exist certain unrepresented technical employees specifically excluded by the parties' stipulation from this residual unit; other unrepresented technical employees whom the parties argue should be excluded if they are deemed to be technical employees; and still other unrepresented technical employees whose inclusion or exclusion from this residual unit have not been addressed at all in this case.

The Board has long held that a petition for a residual unit must include all unrepresented employees residual to the employees in the existing unit. *St. John's*

Hospital, 307 NLRB at 767.¹² This requirement is applied by the Board in all settings, not just to acute care hospitals. *Ibid*; *Fleming Foods, Inc.*, 313 NLRB 948, 950 (1994). As the Petitioner currently represents a nonconforming unit that includes some technical employees as well as some non-professional/non-technical employees, if it seeks to represent employees in a residual unit, it must do so by including all of the Employer's unrepresented technical and non-professional employees. See *St. Mary's Duluth Clinic Health System*, 332 NLRB 1419 (2000); *Fleming Foods, Inc.*, 313 NLRB 948, 950 (1994); *St. John's Hospital*, *supra*.

Thus, while a unit consisting of all non-professional employees or all technical employees would be appropriate under the Board's Health Care Rule if it were being petitioned-for in the first instance, here there is a pre-existing unit that combines both types of employees. Accordingly, any residual unit must include all classifications of both types of employees, to the extent they are not already represented by another labor organization. Because the instant petition does not include all non-technical employees in the residual unit, and the record and positions of the parties make it impossible to modify the petition to comport with this policy, I find that the petition must be dismissed as the unit sought does not constitute an appropriate residual unit. This result is consistent with established Board precedent for conducting residual elections; with the

¹² In *St. John's Hospital*, a union, which represented an existing nonconforming unit of plumbers and refrigeration employees at an acute-care hospital, filed a petition seeking to represent a separate unit consisting of some, but not all, of the remaining skilled maintenance workers at the facility. The Board first held that any election to determine a representative for the unrepresented skilled maintenance workers would have to include all of the remaining skilled maintenance workers residual to the existing unit or units. The Board then went on to apply its long-settled rule that an incumbent union wishing to represent employees residual to those in its existing unit could only do so by adding them to the existing unit, usually by way of a self-determination election, and could not seek to represent them as a separate unit.

Health Care Rule requirement that where there are existing nonconforming units, only those units which comport insofar as practicable with the units established in the Health Care Rule should be found appropriate; and with the Congressional admonition against the undue proliferation of units. *St. John's Hospital*, 307 NLRB at 768. In these circumstances the petition will be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by October 14, 2003.

Dated at San Francisco, California, this 30th day of September, 2003.

/s/ Robert H. Miller
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